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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,546	03/01/2004	Steven T.M. Bavett	04059-PA	9695

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EXAMINER

PATEL, VINOD D

ART UNIT PAPER NUMBER

3742

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,546

Applicant(s)

BAVETT, STEVEN T.M.

Examiner

Vinod D. Patel

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/1/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED OFFICE ACTION

INTRODUCTION

1. This application/control number 10/790546 has been examined. This is the first action on the merits of the claimed invention. The application has claims 1-23 pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claims 1, 6, 21, 22 and 23, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

For examination purpose "or the like principally for outdoor use but usable as well for indoor user" is not considered by the examiner.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3742

6. Claims 1-2, 4-6, 10-18 and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hutter (US4922084).

Hutter discloses in combination a heated driveway, walkway, stairs etc. the combination comprising a form (14) suitably retained on an existing surface, at least one block (10) with open channels for receiving heating wires (12) disposed within the form, the block being fabricated from flexible material such as Teflon or silicone, hard foam or synthetic rubber, which is molded (column 2, lines 20-26), and the block being removably disposed in the form for substantially easier and convenient repair, thus avoiding the necessity for digging up any concrete or masonry materials, electrical means a sinuous heating coil (32) for heating the block. This can be used in wet conditions or environments (Column 1, line 43-44), frictional surface or slip resistant surface is inherent disclosed based on its use and rubber material.

The block being molded principally of recycled rubber is a product by process claim. Prior art of record teaches use of synthetic rubber and recycled rubber is also a synthetic rubber. Patentability of a product-by-process claim does not depend on its method of production but is based on the product. "If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

With respect to claims 2, Hutter discloses cover plate (24) and triangular shaped ramps (16) as keying means thereby retaining block in the form.

Applicant discloses on page 26, (line 14-15), "A keying means 114 (Fig. 10 and 11) can be located on a side wall of pan 100, in order to help hold blocks 120 down in pan 100." But

Art Unit: 3742

does not disclose any detail regarding keying means. Therefore claim limitations are given broadest reasonable interpretation.

During examination, claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

With respect to claims 4, 10, 16, the electrical means comprises conductive wires (32) & (12).

With respect to claims 5 and 11, 15, Hutter discloses a plurality of blocks arranged in a pattern as shown in Figure 1.

With respect to claim 20, Hutter discloses (Column 1, lines 39-52) "Furthermore, a heat sensor is built into the heating system apparatus for connection to a thermostat or other type of regulating arrangement. It should also be noted that the present heating system could be used in wet conditions or environments, such as a bathroom, as well on dry surfaces. Further, the present heating apparatus can be combined with moisture/temperature sensors for automatic operation, such as snow removal."

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutter (US4922084) as applied to claims 1 and 6 above, and further in view of Liebich (US6294768).

Art Unit: 3742

Hutter discloses all the claimed limitations except a conductive mesh.

Liebich discloses a flexible heated tile made from a crumb rubber comprising a mesh (50) to strengthen the flexible layer (14).

It would have been obvious to one of ordinary skill in the art to use a mesh as taught by Liebich for the device of Hutter to strengthen the heating apparatus.

9. Claims 7-8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutter (US4922084) as applied to claims 6 and 12 above, and further in view of Dyer (US5380988).

Hutter discloses all the claimed limitations except a frame anchored to the surface.

Dyer discloses heated mat structure for melting ice and snow (column 9, line 29-33) may be positionally maintained by means of mechanical fasteners passing through fastening holes (27) and into fastening engagement with a supporting surface.

It would have been obvious to one of ordinary skill in the art to use an anchor as taught by Dyer for the device of Hutter to secure the heating apparatus to the supporting surface.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod D. Patel whose telephone number is 703-308-5227. The examiner can normally be reached on 7.30 A.M. TO 4.00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

Art Unit: 3742

applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VP



Vinod Patel
Patent Examiner
Art Unit 3742



ROBIN O. EVANS
PRIMARY EXAMINER

6/8/04